

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

THEARTHA WALLACE, L.A. WALLACE and  
ELNORA WALLACE HOPTON

PLAINTIFFS

VS.

CAUSE NO.05-07-1104

LE COMAS WALLACE, JESSE WALLACE, JR.,  
MARY HILL, DOROTHY JEFFERSON,  
EMANUEL HILL, ARVINE MURPHY, HARRY YOUNG,  
MATTIE LEE JONES, ROBERT YOUNG,  
LINDA BURCHFIELD, SASHA BISCOE, GLORIA  
BRADFORD, ESTELLE BROOKS, LEANDER  
WILSON, JR., CYNTHIA ANN WALLACE MCGOWAN  
JONES, GREGORY DAVIS, CLARENCE WALLACE  
and ALL PERSONS HAVING  
OR CLAIMING ANY INTEREST, LEGAL OR  
EQUITABLE IN THE REAL PROPERTY  
DESCRIBED HEREIN

DEFENDANTS

ORDER QUIETING & CONFIRMING TITLE, PARTITIONING LAND  
AND OTHER RELIEF

This day this cause came on to be heard upon the Plaintiff's Complaint to Quiet and Confirm Title, for Partition of Land, and Other Relief filed herein against Le Comas Wallace, Jesse Wallace, Jr., Mary Hill, Dorothy Jefferson, Emanuel Hill, Arvine Murphy, Harry Young, Mattie Lee Jones, Robert Young, Linda Burchfield, Sasha Biscoe, Gloria Bradford, Estelle Brooks, Leander Wilson, Jr., Cynthia Ann Wallace McGowan Jones, Gregory Davis, Clarence Wallace, Tonya Persons, Demond Persons, all persons having or claiming any interest, legal or equitable in the real property described herein, and unknown heirs of Jessie Wallace, Verneda Ayers Wallace, Thelma Wallace, Edna Wallace Young, Ernestine Young, Oscar Persons, Juanita Wilson, Bobbie Jean Davis, and Derrick Davis, and upon legal service of process on all of said Defendants.

And it appearing to the satisfaction of the Court that all of said Defendants were duly served with process in the manner and for the time required by law so as to require an appearance or answer by all of said Defendants prior to the entry of Default herein; and that Mattie Lee Jones, Tonya

**FILED**

**AUG 30 2005**

**W E DAVIS, CLERK**

*Smith  
Phillips*

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Persons, Demand Persons, Sasha Biscoe, and Harry Young filed appearances in this action agreeing with all relief requested, no other appearance nor answer nor other action has been taken by any other Defendants in this cause; process is complete on all heirs; and that the Court has jurisdiction of the parties and the subject matter and is entitled to proceed herein.

And the Court having reviewed all the papers on file herein and having received proof in support of said Complaint having found therefrom that Theartha Wallace, L.A. Wallace and Elnora Wallace Hopton are entitled to the relief prayed for in their said Complaint to Confirm and Quiet Title, for Partition of Land, and Other Relief as hereinafter granted.

The Court hereby finds as follows:

1. That Jessie Wallace died testate on April 7, 1974, owning an undivided one-half interest in a portion of the parcel of land described herein. Jessie Wallace left his Will which was admitted to probate in the DeSoto County Chancery Court Cause No. 74-179 and the Will being recorded in Will Book 11 at page 187 in the Office of the Chancery Clerk of DeSoto County, Mississippi. That Clarence Wallace was qualified as Executor and has not been discharged. That Petitions To Construe Terms of Will were filed in that cause on January 12, 1979, January 19, 1979 and February 2, 1979. That an Order was entered on February 15, 1979 setting the hearing on said petitions on April 5, 1979 but no order was ever entered on said Petitions.

2. That the Will of Jessie Wallace devises a life estate to Verneda Ayers Wallace in all real property with the remainder as follows:

- a) to Juanita Wilson and Elnora Hampton, the home house and ten acres of land on Poplar Corner Road and each shall have an undivided one-half interest in said property.
- b) to Cynthia Ann Wallace, five acres of land on the Poplar Corner Road.
- c) to Thertha Wallace, ten acres of land on Honeysucker Lane.
- d) to L.A. Wallace, ten acres of land on Honeysucker Lane.
- e) to Le Comas Wallace, four acres of land on Honeysucker Lane.
- f) to Thelma Wallace, four acres of land on Honeysucker Lane.
- g) to Jesse Wallace, Jr., one acre of land on Honeysucker Lane.

h) to Edna Wallace, one acre of land on Honeysucker Lane.

3. That the Will of Jessie Wallace contains no residuary clause. That Jessie Wallace left at the time of his death as his heirs at law, his wife, Verneda Ayers Wallace, and his nine (9) children, namely, Clarence Wallace, Edna Young, Thelma Wallace, Jessie Wallace, Jr., Therta Wallace, Le Comas Wallace, L.A. Wallace, Elnora Hopton and Juanita Wilson.

4. That the land devised by Jessie Wallace totals 45 acres with 15 acres on Poplar Corner Road and 30 acres on Honeysucker Lane which should be Honeysuckle Lane. At the time of his death, Jessie Wallace owned an undivided interest in 67 acres more or less located in Section 35, Township 1, Range 9 DeSoto County, Mississippi.

5. That Verneda Ayers Wallace filed an action to quiet and confirm title and for partition of land in DeSoto County Chancery Court Cause No. 78-717. That the Court on February 15, 1979 entered an Interlocutory Decree Quieting and Confirming Title and Appointing Commissioners For Partition of Land. That the Court found that Verneda Ayers Wallace owned an undivided one half interest in fee in value and a life estate in the remaining half interest and that Edna Young, Thelma Wallace, Jesse Wallace, Jr., Therta Wallace, Juanita Wilson, Lee Comas Wallace, L.A. Wallace, and Elnora Hopkins own the remainder interest after the life estate of Verneda Ayers Wallace in the other half interest under the provisions of the Will of Jesse Wallace and all claims of others are hereby cancelled and held for naught. The Court further ordered the appointment of three commissioners to divide the land into two parts, equal in value. That there is a discrepancy in this order in that Cynthia Wallace McGowan was named as a defendant, filed a waiver of process and the court states that all the defendants are the owners, yet when the court ordered the division her name was not included as a defendant.

6. That further in said partition suit the Commissioner's filed a Report of Commissioners dated March 12, 1979 and filed on March 13, 1979. In said report the Commissioners divided the property into two parts with a line running north to south. They allocated the east thirty-two (32) acres of land including the main dwelling house, tenant house and other improvements into one share to Verneda Ayers Wallace and the remainder of the land being

the west thirty-five (35) acres more or less into the second share to the other owners as set forth in the Interlocutory Decree.

7. That on June 5, 1979 the Court entered a Decree ordering the property be divided into two parcels; the first parcel shall be known as the Eastern parcel and shall contain thirty (30) acres, along with all improvements on those thirty (30) acres; the second parcel shall be known as the Western parcel and shall include thirty-seven (37) acres. The Decree further states that all issues pertaining to Life Estates and construction of the Will and the Estate of Jessie Wallace are not included in this decision.

8. That Verneda Ayers Wallace died on or about January 31, 2000 therefore the issue of a life estate owned by Verneda Ayers Wallace is now moot.

9. That Theartha Wallace, L.A. Wallace, Elnora Wallace Hopton, Le Comas Wallace, and Jesse Wallace, Jr. are children of Jessie Wallace, are beneficiaries named in his will and are all still living and have been made parties herein.

10. That Thelma Wallace, child of Jessie Wallace and beneficiary named in his will died on or about April 15, 1996. That Thelma Wallace left as her heirs at law her four (4) children, namely: Mary Hill, Dorothy Jefferson, Emanuel Hill, and Arvine Murphy. She left no descendants of deceased children and her spouse is deceased.

11. That Edna Wallace Young, child of Jessie Wallace and beneficiary named in his will died on or about July 30, 2004. That Edna Wallace Young left as her heirs at law her husband, Harry Young, and five (5) children, namely: Mattie Lee Jones, Robert Young, Linda Burchfield, Sasha Biscoe, and Gloria Bradford. She had two children who predeceased her, namely: Ernestine Young and Oscar Persons. Ernestine had no spouse or children. Oscar Persons left as his heirs at law two (2) children, namely: Tonya Persons and Demond Persons. He left no spouse.

12. That Juanita Wilson, child of Jessie Wallace and beneficiary named in his will died in 1995. That Juanita Wilson left as her heirs at law three (3) children, namely: Estelle Brooks, Leander Wilson, Jr., and Bobbie Jean Davis. That Bobbie Jean Davis is deceased and her date of death is unknown to the Plaintiffs and her heirs at law are her children, namely: Cynthia Ann

Wallace McGowan Jones (also named as beneficiary in will), Gregory Davis, and Derrick Davis. Bobbie Jean left no spouse. Derrick Davis is deceased and left no spouse, children or descendants of deceased children.

13. That for purposes of clarification Theartha Wallace is one and the same person as Therta Wallace and Thertha Wallace. That Le Comas Wallace is one and the same person as Lee Comas Wallace. That Elnora Hopkins is one and the same person as Elnora Hampton and Elnora Hopton. That Jessie Wallace, Jr. is one and the same person as Jesse Wallace, Jr. That Cynthia Ann Wallace is one and the same person as Cynthia Wallace McGowan and Cynthia Wallace McGowan Jones.

14. That it is impossible to comply with the terms of the will of Jesse Wallace since the Testator did not own all of the property which he attempted to bequeath and devise and it is now necessary for the Court to construe the terms of the will consistent with the intent of the Testator and the real property which the Testator owned at the time of his death.

15. That the Plaintiffs and Defendants should be confirmed as the fee simple owners of the thirty-seven (37) acres in the percentages as set forth by the Court.

16. That the thirty-seven (37) acres is not divisible in kind but may be sold and the proceeds divided as the Court sets forth.

17. That Dale Morrow and its assigns has offered to purchase the above described real property for the sum of \$370,000.00. That \$370,000.00 is the fair market value of this property. That it would be in the best interest of the owners of the property to proceed with the closing of the sale at the earliest possible time.

18. That it is unreasonable and unconscionable to collect all parties involved together to procure this closing. That pursuant to Mississippi Code Section 11-21-11, 1972, as amended, it would be in the best interest of all parties involved to have W.E. Davis, Chancery Clerk of DeSoto County, Mississippi appointed as master to make the sale and handle the closing of the property with all funds being held in escrow for distribution to the owners pursuant to their respective interests as set forth by the Court.

19. The Court should allow a reasonable attorney's fee to the attorney for the Plaintiffs herein to be taxed as a common charge on all the interests and Thearthra Wallace should be reimbursed for real estate taxes, survey expenses, prior attorney fees and other expenses incurred to preserve subject property.

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That Thearthra Wallace, L.A. Wallace, Elnora Wallace Hopton, Le Comas Wallace, Jesse Wallace, Jr., Mary Hill, Dorothy Jefferson, Emanuel Hill, Arvine Murphy, Harry Young, Mattie Lee Jones, Robert Young, Linda Burchfield, Sasha Biscoe, Gloria Bradford, Estelle Brooks, Leander Wilson, Jr., Cynthia Ann Wallace McGowan Jones, Gregory Davis, Clarence Wallace, Tonya Persons, Demond Persons be and they are hereby declared to be the owners of the fee simple title to the following described real property lying and being situated in DeSoto County, Mississippi, to-wit:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 35, TOWNSHIP 1 SOUTH, RANGE 9 WEST; THENCE SOUTH  $00^{\circ} 09'59''$  WEST ALONG THE EAST LINE OF SAID SECTION AND THE CENTERLINE OF POPLAR CORNER ROAD A DISTANCE OF 2672.05 FEET TO A POINT; THENCE NORTH  $89^{\circ} 45'23''$  WEST ALONG THE NORTH LINE OF THE WALLACE AND GALLEGOS TRACTS AND THE SOUTH LINE OF THE COGGINS TRACT A DISTANCE OF 1132.51 FEET TO AN  $\frac{1}{2}$ " IRON PIN FOUND, PASSING AN  $\frac{3}{4}$ " IRON PIPE FOUND AT 656.98 FEET, SAID POINT BEING THE TRUE POINT OF BEGINNING FOR THIS TRACT; THENCE SOUTH  $00^{\circ} 08'15''$  WEST ALONG THE WEST LINE OF THE GALLEGOS TRACT A DISTANCE OF 700.53 FEET TO AN  $\frac{1}{2}$ " IRON ROD FOUND; THENCE SOUTH  $01^{\circ} 54'58''$  EAST A DISTANCE OF 379.29 FEET TO AN IRON PIN AT THE NORTHWEST CORNER OF THE DAVIS TRACT; THENCE SOUTH  $01^{\circ} 33'21''$  WEST ALONG THE WEST LINE OF THE DAVIS TRACT A DISTANCE OF 489.22 FEET TO AN  $\frac{1}{2}$ " IRON PIN SET; THENCE SOUTH  $89^{\circ} 06'28''$  WEST ALONG THE NORTH LINE OF THE KRAFT TRACT A DISTANCE OF 11.51 FEET TO  $\frac{1}{2}$ " IRON PIN FOUND; CONTINUING ALONG THE NORTH LINE OF THE KRAFT TRACT; THENCE NORTH  $89^{\circ} 45'28''$  WEST A DISTANCE OF 286.88 FEET TO AN  $1\frac{1}{2}$ " IRON PIPE FOUND; THENCE NORTH  $00^{\circ} 07'17''$  WEST ALONG THE EAST LINE OF WALLACE SUBDIVISION SECTION "B" A DISTANCE OF 625.08 FEET TO AN  $\frac{1}{2}$ " CONDUIT PIPE FOUND; THENCE SOUTH  $89^{\circ} 55'18''$  WEST ALONG THE NORTH LINE OF WALLACE SUBDIVISION SECTION "B" A DISTANCE OF 1216.00 FEET TO A PK NAIL SET, PASSING AN  $\frac{5}{8}$ " IRON PIN FOUND AT 1185.13 FEET; THENCE NORTH  $00^{\circ} 18'18''$  EAST A DISTANCE OF 950.65 FEET TO AN  $\frac{1}{2}$ " CONDUIT PIPE FOUND; THENCE SOUTH  $89^{\circ} 45'23''$  EAST ALONG THE SOUTH LINE OF THE COGGINS TRACT A DISTANCE OF 1512.94 FEET TO THE POINT OF BEGINNING; CONTAINING 37.33 ACRES OR MORE OR LESS.

*Indexing instruction for deed records: located in southeast quarter of 35-1-9.*

2. That the terms of the Last Will and Testament of Jessie Wallace are construed herein to reflect the intent of the Testator. It appears from looking at the four corners of the Will that Jessie Wallace intended that his devisees receive different proportions of the real property he owned at the time of his death. It was his intent was to devise all the real property he owned at the time of his death through his Last Will and Testament. This Court has previously ordered the confirmation of the owners on February 15, 1979 and ordered that they only own 37 acres. That order remains valid and the terms of the Last Will and Testament of Jessie Wallace are construed to set forth the following divisions of the 37 acre tract in the proportions as he set forth:

- Elnora Wallace Hopton - 4.1 acres
- Juanita Wilson - 4.1 acres
- Cynthia Ann Wallace - 4.1 acres
- Thertha Wallace - 8.2 acres
- L.A. Wallace - 8.2 acres
- Le Comas Wallace - 3.28 acres
- Thelma Wallace - 3.28 acres
- Jesse Wallace - .82 acres
- Edna Wallace - .82 acres

3. That the interests of the parties herein is as follows:

- Elnora Wallace Hopton - 4.1 acres
- Juanita Wilson heirs-
  - Estelle Brooks- 1.36 acres
  - Leander Wilson, Jr. - 1.36 acres
  - Bobbie Jean Davis heirs -
    - Cynthia Ann Wallace McGowan Jones - .46 acres
    - Gregory Davis - .46 acres
    - Derrick Davis heirs -
      - Cynthia Ann Wallace McGowan Jones - .225 acres
      - Gregory Davis - .225 acres
- Cynthia Ann Wallace - 4.1 acres
- Thertha Wallace - 8.2 acres
- L.A. Wallace - 8.2 acres
- Le Comas Wallace - 3.28 acres
- Thelma Wallace heirs -
  - Mary Hill - .82 acres
  - Dorothy Jefferson - .82 acres
  - Emanuel Hill - .82 acres
  - Arvine Murphy - .82 acres
- Jesse Wallace - .82 acres
- Edna Wallace heirs -
  - Harry Young - 0.10 acres
  - Mattie Lee Jones - 0.10 acres
  - Robert Young - 0.10 acres
  - Linda Burchfield - 0.10 acres
  - Sasha Biscoe - 0.10 acres

Gloria Bradford - 0.10 acres  
 Ernestine Young heirs  
     Harry Young -0.013acres  
     Mattie Lee Jones -0.013acres  
     Robert Young - 0.013acres  
     Linda Burchfield - 0.013acres  
     Sasha Biscoe - 0.013acres  
     Gloria Bradford -0.013acres  
     Oscar Persons heirs - 0.013acres  
 Oscar Persons heirs  
     Tonya Persons - 0.05 acres  
     Demond Persons -0.05 acres

4. That the property is not divisible in kind and cannot be partited as set forth above. Therefore the property should be sold and the net proceeds divided accordingly as set forth above.

5. That an offer to purchase the herein described real property has been received from Dale Morrow and its assigns for the sum of \$370,000.00. That \$370,000.00 is the fair market value of this property which the Court finds to be fair and reasonable and, therefore, acceptance of said offer is approved by the Court.

6. That W.E. Davis, Chancery Clerk of DeSoto County, Mississippi is hereby appointed as master to make the sale of the subject property on behalf of the owners pursuant to Mississippi Code Section 11-21-11, 1972 as amended at the earliest possible time.

7. That the law firm of Smith, Phillips, Mitchell, & Scott, LLP was employed by the Plaintiff's herein to provide legal services and attorney fees have been incurred in the amount of \$3,967.50 together with court costs and expenses of \$1,136.30 totaling together \$5,103.80. That a portion of the fees have been paid leaving a balance of \$3,508.00 to be paid. Said fees are fair and reasonable and should be taxed as a common charge on all interests and paid from the proceeds of the sale of the said property.


8. That Thearthra Wallace should be reimbursed for real estate taxes, survey expenses, prior attorney fees and other expenses he has personally incurred to preserve subject property in the total amount of \$7,000.00 and same should be taxed as a common charge on all interests and paid to him from the proceeds of the sale of the said property.



SO ORDERED, ADJUDGED AND DECREED this the 30<sup>th</sup> day of August, 2005.

  
CHANCELLOR

Presented by:

  
Rebecca S. Thompson, MSB #9765  
Smith, Phillips, Mitchell & Scott, LLP  
P.O. Box 346  
Hernando, MS 38632  
662-429-5041

CHANCERY COURT  
STATE OF MISSISSIPPI, COUNTY OF DESOTO  
HEREBY CERTIFY that the above and foregoing is  
a true copy of the original filed in this office.  
This the 30 day of August, 2005  
By W.E. Davis, Clerk of the Chancery court  
By S. Patrick D.C.